documents should be given. Within the limit the right appears to be recognized according to the English authorities. In the present case there can be no question as to the interest of the party who claims inspection. It is plain that a person charged with an offence is legitimately interested in knowing beforehand the particulars of the charge made against him, and the names of the witnesses who are going to support it. His interest is none the less a legitimate one, because some persons might make improper use of the information so obtained. If, therefore, the documents sought to be inspected are public documents, and if they are unprotected by special privilege, it follows that the claim to inspection must be allowed."

In a subsequent case decided in 1903 in Calcutta, *Chundy Churn Dhur* v. *Biostab Churn Dhur*,[3] Henderson J. said at page 132:

"I agree with the opinion expressed by Mr. Justice Shephard in *Queen Empress* v. *Arumugam* that it 'might be inferred that the legislature intended [by section 76 of the Evidence Act] to recognise the right generally, that is the right to inspect public documents, for all persons who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given'."

In 1942 a similar problem was considered by the Bombay High Court in *P.D. Shamdasani* v. *Sir Hugh Golding Cocke & Anor.*[4] There Beaumont C.J. at page 26 said:

"Reference has been made to section 76, Evidence Act, but that section does not really assist us on the point we have to determine. All that that section does is to give to a party, who has the right to inspect a public document, as defined in section 74, the right to demand a copy of it on certain terms. But the right conferred by that section is confined to persons who have the right to inspect a document, and the Evidence Act does not specify the persons who have a right to inspect public documents. There would seem to be in England a common law right of inspection of public documents by a person interested in the document, so far as may be necessary for the protection of such interest."

In 1957 this question was considered in the Madras High Court in *Rasipuram U.M. Service* v. *I.T. Commissioner*[5] when Rajagopalan J. said at page 153: — "The test prescribed by section 76 of the Evidence Act is whether the person who applies for a copy of a document has a right to inspect it....

Whether any other person would have a right to inspect that document would be irrelevant. It is the person who has a right to inspect that is given the right to obtain a copy. That is the scheme of section 76 of the Evidence Act."

In 1961 the Full Bench of the Madras High Court (three judges) again considered this question in *State of Madras* v. *G. Krishnan*[6] when Ramachandra Iyer J. said at page 96:

"Section 76 entitles a person, who has a right to inspect a public document, to a certified copy thereof. The section, however, does not specify the persons who would be entitled to inspect a public document. But judicial decisions have long ago settled that question. It has been held that the right to inspect a public document is correlated to the interest which the person who seeks inspection in the document; a mere curiosity or even an interest in some other matter which could perhaps be better served by the inspection, would not be sufficient."

From the above we would deduce the law to be as follows: though our section 76 is silent as to the right of the applicant to inspect the first information report in question, it is clear that under the common law he has that right, as he is a person interested in it and inspection is necessary for the protection of his interest. This first information report is admissible in evidence in the criminal trial against him under section 157 of the Evidence Act and therefore the applicant or his counsel should be supplied a copy.

If a certified copy of the first information report in question is supplied to the applicant, it is admissible in evidence under section 77 of the Evidence Act. What was then the point of adding section 108A Criminal Procedure Code in 1936? The learned judge who considered this action thought that the point was that the legislature had never intended that a person such as the applicant should have a right of inspection under section 76 of the Evidence Act.

With respect it would appear to us that in 1936 the legislature overlooked the fact that under the common law such a person already had that right, as was declared as long ago as in the year 1888 in *Mutter*.[1]

We would therefore allow this appeal. The learned judge's order is set aside and instead there shall be an order in terms of the motion.

Appeal allowed.

Solicitor: *S. Sivasubramanian.*

GOH HOOI YIN v. LIM TEONG GHEE & ORS.

[O.C.J. (Arulanandom J.) November 17, 1975]
[Penang — Civil Suit No. 212 of 1974]

Practice and Procedure — Discovery of documents — Inspection of third party's documents — R.S.C. 1957, O. 31 r. 15.

Banking — Inspection of bank accounts — Bankers' Books (Evidence) Act, 1949, s. 7(1).

The plaintiff applied for discovery and inspection of books of the 3rd defendants, who were bankers, in respect of the accounts of the other defendants with the bank. The defendants opposed the application on the ground that it was irrelevant.

Held: (1) the main object of the provisions of the Bankers' Books (Evidence) Act is to enable evidence to be procured and given and to relieve bankers from the necessity of attending and producing their books. They do not give any new power of discovery or alter the principles of law or the practice with regard to discovery;

(2) in this case the accounts sought to be inspected are the accounts of a different company with limited liability and registered under the Companies Act, albeit the two directors are the same persons. Furthermore the question of in what circumstances a court could order inspection of accounts of third parties has been considered in many leading cases and it has been held that the jurisdiction of the court in such matters must be exercised with great caution;

(3) it is settled law that in an application of this nature if the opposite party states on affidavit that the information sought is irrelevant, it is final and the court should not at this stage question it.

Cases referred to:-

(1) *South Staffordshire Tramways Co.* v. *Ebbsmith* [1895] 2 Q.B. 669, 675.

(2) *Parnell (formerly O'Shea)* v. *Wood & Anor.* (1892) 17 P.D. p. 137.

(3) *Howard* v. *Beall* (1889), 23 Q.B.D. 1.

(4) *Tunstall* v. *Steigmann* [1962] 2 Q.B. 593.

(5) *Pollock* v. *Garle* [1897] Ch. 1.

CIVIL SUIT.

Goh Kooi Choo (Miss) for the applicant.

R.R. Chelliah (*A. Jayadeva* with him) for the respondents.

Arulanandom J.: This was an application by the plaintiff by Summons-in-Chambers dated August 25, 1975 for an order that —

"the plaintiff and/or his solicitor and/or his accountant be at liberty to inspect and take copies of all entries and/or matters in the books of the First National City Bank of New York, Penang Branch of No. 1, Light Street, Penang (hereinafter called 'the Bank') relating: —

(i) to any accounts/overdraft accounts of the Fourth Defendant, Weng Lye Development Sdn. Berhad having Ooi Choon Lye and Yap Seong Weng as the two and only directors;

(ii) to any accounts/overdraft accounts of the Fourth Defendant's sister company Lye Weng Enterprises Sdn. Berhad having the same two and only directors;

(iii) to any accounts/overdraft accounts of other sister companies of the Fourth Defendant's same two and only directors with the said accounts at the Bank.

and that the costs of and incidental to this application and the said inspection and copies be costs in the cause."

The brief history of the case is that the plaintiff commenced an action against the four defendants by writ on June 18, 1974 claiming *inter alia* against the fourth defendant as follows: —

1. Specific performance of the Agreement dated July 9, 1973 between the fourth defendant and the plaintiff with abatement of $50,000 of the purchase price and
2. All necessary and proper accounts, directions and enquiries;
3. Damages for breach of contract in lieu of or in addition to specific performance.

Alternatively

4. Recission of the said Agreement and return to the plaintiff of the deposit of $17,500 together with interest thereon at such rate as the court may determine from November 6, 1973, to the date of payment thereof and
5. Damages pursuant to Clause 6 of the said Agreement of $35,000.
6. A declaration that the plaintiff is entitled to a lien on Holding No. 456, T.S. 20, North East District, Penang, for his deposits, interest and any damages and/or costs awarded herein.

Against all the defendants, and each of them:

7. Damages for fraudulent misrepresentation:
   (i) $55,140 (in the event of specific performance with abatement under 1 above); or

   alternatively

   (ii) $93,740.50 (in the event of recission under 4 above).

To summarize the cause of action briefly, it was that the plaintiff had entered into agreement with the fourth defendant on the 9th day of July, 1973 for the purchase of property comprised in Holding No. 283 T.S. 20 N.E.D. Penang on which No. 53, King Street, Penang stood for the sum of $175,000 and paid as deposit and in part payment the sum of $17,500 to the fourth defendant and $5,000 commission to the first and second defendants.

The fourth defendant by a letter dated November 6, 1973 claimed to have forfeited the deposit paid by the plaintiff.

Hence the suit for specific performance.

The alternative claims arise for damages because the plaintiff alleges that when the agreement of sale was executed by the plaintiff and defendant, the fourth defendant did not have any title or interest to the said land and the plaintiff has suffered loss and damage through the fraudulent representation of the 1st, 2nd and 4th defendants to the plaintiff that he had.

After several affidavits of documents and further and better particulars had been filed on order of court, on the 12th of May, 1975 the court on the application of the plaintiff granted the following order:

"that the plaintiff and/or his solicitor and/or his accountant be at liberty to inspect and take copies of all entries in the books of the First National City Bank of New York, Penang Branch of No. 1, Light Street, Penang, relating to the account of the Fourth Defendant with the said Bank."

From the affidavit filed in support of the present application by the plaintiff's solicitor dated August 26, 1975, in the grounds set out for justifying the application, the plaintiff states the issues are as follows:

"2. (i)(a) whether a cheque in payment for the said property and premises was made from any accounts/overdraft accounts of the Fourth Defendant, Weng Lye Development Sdn. Berhad (incorporated by the two and only directors, Ooi Choon Lye and Yap Seong Weng on the September 26, 1972 as in exhibit page 20 of the Articles of Association of Weng Lye Development Sdn. Berhad and marked 'GKC-1') and drawn on the Bank; and for what sum, and paid to whom, at what date

or

(b) whether a cheque in payment for the said property and premises was made from any accounts/overdraft accounts of Lye Weng Enterprises Sdn. Berhad (sister company of the Fourth Defendant and incorporated by the Fourth Defendant's same two and only directors, Ooi Choon Lye and Yap Seong Weng on June 12, 1973 as in exhibit page 20 of the Articles of Association of Lye Weng Enterprises Sdn. Berhad and marked 'GKC-2') and drawn on the Bank; and for what sum, and paid to whom, at what date.

(ii) At what date the said cheque/cheques was/were negotiated by the payee for the said sum for the property and premises.

(iii)(a) Whether the said payment to the payee was made directly from any accounts/overdraft accounts of Weng Lye Development Sdn. Berhad or through any accounts/overdraft accounts of Lye Weng Enterprises Sdn. Berhad;

or

(b) whether a similar sum was transmitted from any accounts/overdraft accounts of Lye Weng Enterprises Sdn. Berhad to the accounts/overdraft accounts of Weng Lye Development Sdn. Berhad at a similar/later date in satisfaction of the payment out."

The affidavit further states

"3. In or about the year 1973, the Fourth Defendant had a banking account/accounts with the Bank at their branch office of No. 1, Light Street, Penang and the same two and only directors, Ooi Choon Lye and Yap Seong Weng, of the Fourth Defendant company in/about the same year also had another banking account or other banking accounts with the same said Bank by their sister company Lye Weng Enterprises Sdn. Berhad.

4. The said entries and/or matters in the bankers books are or may be relevant in establishing:—

(i) that the said property and premises were purchased after the execution of the Agreement dated July 9, 1973, and after the date for completion of the Agreement on November 6, 1973;

(ii) that the said payment for the said property and premises was made from the account/accounts/overdraft account/overdraft accounts of Lye Weng Enterprises Sdn. Berhad through the account/accounts/overdraft account/overdraft accounts of Weng Lye Development Sdn. Berhad;

(iii) that the said Weng Lye Development Sdn. Berhad purchased the said property by increased overdrafts from the Bank, after November 6, 1973, to Lye Weng Enterprises Sdn. Berhad, granted in/about 1973 by the said Bank as in the resolution of Weng Lye Development Sdn. Berhad in exhibit marked 'GKC-3', and by the Charge of the said property and premises to the said Bank by Gadaian Jilid 61, Folio 4, Perserahan No. 1844/74 in exhibit marked GKC-4".

In support of the application counsel for plaintiff urged before me the following:

The fourth defendant and Weng Lye Development Sdn. Bhd. and Lye Weng Enterprises Sdn. Bhd. are one and the same people consisting of the same directors and with identical memoranda of Association and Articles of Association. She argued that if companies are identical, plaintiff is entitled to the order asked for and in support of her contention she relied on the case of *South Staffordshire Tramways Company* v. *Ebbsmith*[1] where Lord Esher M.R. said in the course of his judgment

"The application — though it is impossible to define it exhaustively — would be that, if the court were satisfied that in truth the account which purported to be that of a third person was the account of the party to the action against whom the order was applied for, or that, though not his account, it was one with which he was so much concerned that items in it would be evidence against him at the trial, and there were no reasons for refusing inspection, then they might order the inspection; but, unless they were so satisfied, they ought not to do so."

Counsel for defendant opposed the application on the grounds that the information sought was irrelevant and that the application was for an order for a roving inspection before trial in the hope of finding something which might be useful. Counsel further argued this application went far beyond what was envisaged in Order 31 rule 15 relating to inspection and further section 7 of the Bankers' Books (Evidence) Act, 1949 was not intended for that purpose.

The rules relating to discovery are laid down in Order 31 of the Rules of the Supreme Court. One of the purposes of discovery is to enable a party to obtain production of documents relevant to the dispute in issue for the purpose of preparing for the trial of the cause and in the process the party may apply for inspection of documents.

Order 31 rule 15 of the Rules of the Supreme Court reads as follows:

"15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court or judge shall deem sufficient for not complying with such notice, in which case the court or judge may allow the same to be put in evidence on such terms as to costs and otherwise as the court or judge shall think fit."

It is to be noted that the only relevant documents referred to are documents references to which are made in any pleadings or affidavits.

It is quite clear from the application before this court that the accounts which the plaintiff seeks to inspect in his second and third prayers do not come within the ambit of this rule.

Section 7(1) of the Bankers' Books (Evidence) Act, 1949 is *in pari materia* to the English Act. The main object of the provisions of the Act is to enable evidence to be procured and given and to relieve bankers from the necessity of attending and producing their books. They do not give any new power of discovery or alter the principles of law or the practice with regard to discovery.

In *Parnell (formerly O'Shea)* v. *Wood & Anor.*[2] the Court of Appeal in upholding the trial judge's refusal to allow inspection of pass books of a party had this said by Kay L.J.:

"It is necessary to proceed with caution in acting on section 7 of the Bankers' Books Evidence Act, as was observed by Bowen L.J., in *Arnott* v. *Hayes*. According to the appellants, if a person engaged in litigation has a banking account, his adversary is entitled to inspect that account to see whether he can find anything that will help him. The Bankers' Books Evidence Act has nothing to do with any question of the kind. Section 7 of the Act gives a certain power of inspecting bankers' books if the judge thinks fit to order it, but to suppose that it meant to authorize a roving inspection of them is absurd. The main object of the Act was this: before the Act the only way of making bankers' books evidence was to have them produced at the trial, and to examine the clerk who kept them. Bowen L.J., in *Arnott* v. *Hayes*, has pointed out the course of proceeding. The books which were wanted were generally books which were in daily use, and the statute was mainly passed for the purpose of relieving bankers from this inconvenience by allowing them to make copies and verify them. The Act does indeed provide by section 7 for allowing inspection where a judge thinks proper to order it, but a case must be made shewing that such inspection is proper. I never saw a more extraordinary application than the present. Pass books are produced which are no doubt copied from the banker's books, but the party producing them seals up parts which she swears not to be relevant. According to the law of discovery, the opposite party has no right to look at the parts so sealed up. The present application is an attempt to get behind the affidavit of the party producing the documents. There is nothing to shew that the affidavit is untrue, but the applicants wish to evade it by obtaining inspection of the books from which the pass books were made out."

In the case before me the application is for the inspection, not of the accounts of the fourth defendant, as such an order has already been obtained by the plaintiff and acted upon, but the books of another company Lye Weng Enterprises Sdn. Bhd. on the grounds that the two directors of both companies are the same persons and their Memoranda of Association and Articles of Association are identical.

It is true that the court if satisfied that the account of the third person was in fact the account of the party to the action and could be used in evidence

against him, the court has jurisdiction to make an order for inspection of the third parties' accounts for the reasons given by Matthew J. in *Howard* v. *Beall*.[3] But in this case the accounts sought to be inspected are the accounts of a different company with limited liability and registered under the Companies Act, albeit the two directors are the same persons. A company is a complete legal entity and a completely different person from others or other companies, and directors cannot be equated with the company or vice versa.

In *Tunstall* v. *Steigmann*[4] Ormerod L.J. in the course of his judgment had this to say:

"It was decided in *Salomon* v. *Salomon & Co. Ltd.* that a company and the individual or individuals forming a company were separate legal entities, however complete the control might be by one or more of those individuals over the company. That is the whole principle of the formation of limited liability companies and it would be contrary to the scheme of the Companies Acts to depart from that principle. It has been contended in this case that a realistic view should be taken of the circumstances. It is submitted that any person in the street would say that the business was the landlord's business, notwithstanding that it was being carried on by a limited company, and that in those circumstances it should be held that the provisions of paragraph (g), to which I have referred, should be considered to be satisfied. That, I think, is a dangerous doctrine."

The principle on which our limited liability companies are incorporated are identical and derive from English law and it is incumbent on our courts to abide by the doctrines laid down by English courts unless there are compelling reasons not to do so.

Furthermore the question of in what circumstances a court could order inspection of accounts of third parties has been considered in many leading cases and it has been held that the jurisdiction of the court in such matters must be exercised with great caution.

In *Pollock* v. *Garle*[5] Lindley M.R. after reading section 7 of the Bankers' Books (Evidence) Act said:

"If those words are taken literally, they say that on the application of any party to legal proceedings the court may enable the applicant to inspect and take copies of any entries in the banking accounts of any other people. It is monstrous to suppose that such was the intention of the Legislature. What was meant was entries in an account which is in form or in substance the account of a party to the litigation. One of the parties may be an undisclosed principal, and an account kept at a bank in the name of a third party may be really his, and in such a case inspection might properly be ordered. But when an account is the account of a person who has nothing to do with the litigation, the court ought to look to the effect in practice of such an order on the rights of third parties, and to take care that this section is not made a means of oppression."

Again in the same case Chitty L.J. said:

"The account to which the order under appeal relates is not in form or in substance the account of the defendant, but the account of third persons. Those persons object to having their account inspected. This is really an attempt to obtain discovery from third persons by means of section 7 of the Act of 1879. That section is not in terms confined to entries in the account of a party to the action; but if the court is asked for an order to inspect and take copies of the banking account of persons not connected with the litigation, it ought, if it can make such an order at all, to exercise the greatest caution in doing so."

Coming back to the case relied on by counsel for plaintiff, in the same case where the order to inspect third parties' accounts was in fact refused, Lord Esher M.R. after considering the facts of the case stated:

"It seems to me that, if we made the order sought for, we should be granting an application of a fishing character, made by the plaintiffs with a view to obtaining an opportunity of trying to find in the account items favourable to their case, but the existence of which they have at present no sufficient ground for suspecting."

It has further been held that mere grounds of suspicion, even though they may be strong are not sufficient to justify the court in ordering inspection of third parties' accounts. In the same case of *South Staffordshire Tramways* v. *Ebbsmith* Kay L.J. in his judgment said:

"The application is not merely for inspection of the defendant's account, but also for inspection of the account of the Dickinson Tramway Appliance Company, which is not a party to the action."

and later

"But I do not think we are driven to decide that point, because I agree with the Master of the Rolls that, before we grant inspection of the account of the company, the plaintiffs ought to be able to shew not only that the company can be identified with the defendant, but also that there are entries which will probably be in the account — on which a finger can almost be laid — material to the questions at issue in the action, and which will be evidence against the defendant at the trial."

Looking at the affidavit in support of the application I do not find anything to so suggest that there is some particular item in the third parties' accounts which are relevant to determine the issues before the court. The application is very much a fishing expedition. The issues before the court are whether the defendant had committed a breach of the agreement of sale to the plaintiff by terminating the agreement and forfeiting the deposit. The terms of the agreement will be before the court and parties can adduce evidence on their own behalf. The question of fraudulent representation does not need inspection of accounts of third parties at this stage. Finally the defendant has stated in his affidavit that the information sought by the plaintiff is irrelevant. It is settled law that in an application of this nature if the opposite party states on affidavit that the information sought is irrelevant, it is final and the court should not at this stage question it. The principle has been upheld in many cases regarding inspection including the cases referred to above.

I would therefore dismiss the application with costs.

Application dismissed.

Solicitors: *Lee Kok Liang & Co.; R.R. Chelliah Bros.*